BAIL SLIP

The Appellant/Accused was directed to be released on bail by the Order of this Court dt. 30.4.2003 made in Crl.M.P.No.3763/2003 in C.A.No.672/2003 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27-06-2006

CORAM:

THE HON'BLE MR.JUSTICE M.KARPAGA VINAYAGAM
AND
THE HON'BLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 672 of 2003

Mangilal ..Appellant/Accused.

-vs-

State rep. by
The Inspector of Police,
Thirunindravour Police Station,
Crime No.269/1999. .. Respondent/Complainant.

This appeal is filed against the Judgment passed in S.C.No.2/2000 dated 03.05.2002 on the file of Additional District and Sessions Judge (Fast Track Court No.1), Chengalpattu.

For appellant: : Mr.P.Venkatasubramanian
For respondent: : Mr.V.R.Balasubramaniam
Government Advocate.[Crl. Side].

JUDGMENT

A.C.ARUMUGAPERUMAL ADITYAN,J

The sole accused in S.C.2 of 2000 on the file of Additional District and Sessions Judge (Fast Track Court-I) Chengalpattu is the appellant herein.

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:

Due to misunderstanding, the accused had committed murder of his wife Gowri Bai on 5.7.1999 between 13.30 hours and 15.00 hours with a knife, stabbing her on her neck , right mandible region, left cheek and left

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chest causing instantaneous death. In this case, a complaint was preferred by the accused himself to P.W.26, on 5.7.1999, at about 5.00p.m., who had registered a case in Cr.No.269 of 1999 under Section 302 and 380 IPC. The First Information Report is Ex P21. P.W.26 took up investigation and visited the place of occurrence prepared Observation Mahazar Ex P1 and also sought the help of sniffer dog which was brought to the scene of occurrence by P.W.18 and the sniffer dog after taking scent at the place of occurrence lead the police up to the accused's grocery shop by name " Jagathambal Maligai" and finger prints were lifted from the knife recovered from the accused at the place of confession before P.W.26 and the jewels which were said to be stolen away from the place of occurrence have been recovered from the complainant, and thereupon P.W.26 arrested the complainant namely, the husband of the deceased and laid charge sheet under Section 302 IPC. The case was taken on file by the learned Judicial Magistrate No.2, Thiruvallur as PRC 26 of 1999 and after furnishing copies to the accused under Section 207 Cr.P.c. , the learned Magistrate had committed the case for trial to the Court of Sessions under Section 209 Cr.P.C.

3. On the side of the prosecution P.Ws1 to 26 were examined . Exs P1 to P30 and M.Os 1 to 18 were marked.

4. P.Ws.1 and 2 are the children of the accused and the deceased P.W.1 is the son of the deceased, a minor, who would depose that at the time of occurrence, he was aged 9 and that on 5.7.1999, he went to the school in the morning and he returned from the school at about 3.45p.m., he saw his mother lying in a pool of blood and the door of the house was kept ajar and thereupon, he went to the school where his sister Mamtha Devi is studying and fetched his sister from the said school and that his sister informed him that their mother died and his sister left to her father's shop to pass on the information to her father. P.W.2, Mamthadevi, is the daughter of the deceased as well as the accused, who would depose that on 5.7.1999 at about 12.30p.m., , she came to the house to take lunch and left to the school at about 1.00p.m., along with her brother P.W.1 and that at about 4.00p.m., her brother came to the school and informed her that their mother is no more . Immediately, she rushed to the house and saw her mother in a pool of blood and thereupon, she went to the shop of her father and after informing him that mother is no more , brought him to the house and her father went to the police station and he preferred a complaint. In the cross examination, she had identified M.Os 1 to 6 are the jewels belonging to the deceased. P.W.3 to P.W.10 have not supported the case of the prosecution . Hence, they were treated as hostile witnesses. P.W.11 would depose that the accused is his uncle's son and that the accused is conducting grocery shop and that he had also lend Rs.30,000/-to the accused for opening the shop and that the accused had not returned the said amount and that on 4.7.1999 between 7.00p.m., and 8.00p.m., he went to the grocery shop of the accused and demanded him to return the amount to which the accused said that since he had incurred loss in the business, he is not in a position to return the

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amount at present. P.W.11 has also informed the accused that he borrowed money from others and advanced the same to the accused and that he has to pay the interest to the loan amount borrowed by him and since they are urging, he is hot pressed for money and demanded the accused to repay the loan amount borrowed from him at the earliest . But the accused bluntly refused to repay the amount and challenged that if he wants, he can go to any place for taking any action against him. P.W.12 is also not supported the case of the prosecution. P.W.12, P.W.13, P.W.14, P.W.15, and P.W.16 have also turned hostile. P.W.17 is the photographer who had taken M.O.7 negatives for which M.O.8 are the positives. P.W.18 is the sniffer dog handler, who would say that on 5.7.1999, he brought the sniffer dog Robin to the place of occurrence as per the request made by the Inspector of Police, Thirunindravour police station and that at about 8.30p.m., the dog took scent from the place of occurrence but went upto the Jagathambal Maligai, (Grocery) Shop and that he informed Investigaton Officer that the sniffer dog proceeded upto the grocery shop by name Jagathambal Maligai Stores. P.W.20 is the then Head Constable of Thirunindravoor Police Station. He would depose that on 5.7.1999, he went to the place of occurrence and after the inquest was conducted by the Inspector of Police, he took the corpse of the deceased and handed it over to P.W.21 the Doctor who had conducted autopsy on the corpse of the deceased and issued ExP13 Post-mortem certificate. The doctor has opined that the deceased would have died due to shock and haemorrhage resulted, due to several stab injuries , she had received all over her body. ExP13 is the post mortem certificate. P.W.22 is the assistant of the forensic Science laboratory who would depose that the material objects connected with this case received by him under M.O.9 to M.O.16 were subjected to chemical analysis and M.Os 10 to 16 were found with blood stains Ex.P.14 is the chemical analyst's report. P.W.24 is the Finger Print Expert, who would depose that as per the intimation received from the Inspector of Police on 5.7.1999 went to the place of occurrence but could not see any finger prints in the place of occurrence and hence he went to the office on 6.7.1999 and the Inspector of Police informed that blood stained cloth and knife were found at Gomathipuram Kuthukovil, and thereupon he went there and examined the blood stained knife containing finger prints and thereafter conducted various tests and found that the finger print taken from the accused exactly tallied with the finger print lifted from the place of occurrence. Ex P16 is the report. He has also stated that the finger print lifted from the knife seized from the accused said to have been used in the occurrence also tallied with the finger print lifted from the accused. P.W.25 is the Head Clerk of the Judicial Magistrate's court who would sent ExP.17 the requisition letter of the Inspector of Police addressed to Judicial Magistrate with a request to send material objects to forensic science laboratory for chemical analysis and Ex P19 is the serological report. P.W.26 is the Investigating Officer, who had, after the receipt of ExP20 complaint had proceeded to the place of occurrence and prepared Ex P22 Observation Mahazar and Ex P23 is the rough sketch and visited the place of occurrence and conducted inquest and has examined witnesses and prepared their statements and after following the

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formalities had arrested the accused, who was produced by the President of Traders' Association, Thirunindravoor and recorded his confession statement under Ex P26 on 6.7.199 at about 2.00p.m., he had recovered cash Rs.14,700/- (M.O 17) and M.Os 1 to 6 jewels and also re covered M.O.18 knife under Ex P29 Mahazar. Since the accused had also sustained injuries, he was referred to Thiruvallur Government Hospital with a police memo and when the seized jewels were shown to P.W.2, the daughter of the deceased, she had identified those jewels as that of her mother. Ex P30 is the Accident Register relating to the accused and P.W.26 has examined the witnesses and recorded the statements and after completing the investigation, he has filed the charge sheet. On the side of the prosecution P.Ws1 to 26 were examined and Exs P1 to P30 and M.Os 1 to 18 were marked.

5. Incriminating circumstances were put to the accused on the basis of the oral and documentary evidence under Section 313 Cr.P.C to which the accused said witnesses have deposed falsehood. After going through the oral and documentary evidence, the learned Sessions Judge, has come to the conclusion that the accused is guilty under Section 302 IPC and convicted and sentenced to undergo life imprisonment. Against the said findings, the accused has preferred this appeal.

6. The point for determination in this appeal is whether the findings of the learned Sessions Judge that the accused is guilty under Section 302 IPC is sustainable for the reasons stated in the grounds of appeal?

7. The Point:
The entire case of the prosecution hinges upon the confession statement of the accused to P.W.26 and thereupon the recovery of the jewels M.O. 1 to M.O.6 and M.O.17 cash of Rs.14,700/- and M.O.18 blood stained knife and M.O.10 blood stained shirt, M.O.11 blood stained underwear under ExP27 to 29 mahazar. The important point which goes against the accused is Ex P20, the complaint preferred by the accused to P.W.26. In the complaint the accused has stated that on information from P.W.2 his daughter , he went to his house and saw his wife lying dead with several stab injuries and a sum of Rs.14,700/- cash besides two pairs of silver anklets, three sovereign gold necklace, one pair of ear studs, silver bangles, silver thali , two silver ring were also lost. But the above said items of gold and silver ornaments and cash of Rs.14,700/- were recovered under Section 27 of the Evidence Act by P.W.27 on the basis of Ex.P.26 confesion statement of the accused which is admissible in evidence. There is no explanation forthcoming from the accused, how he came into the possession of the above said cash as well as gold and silver articles alleged to have been stolen from his house after the occurrence. In Ex P26 confession statement, the accused narrates how he came into the possession of the above said silver and gold articles and cash. The Doctor, who had conducted autopsy on the corpse of the deceased has issued ExP13 post mortem certificate which shows that the deceased was inflicted with as many as seven cut as well as stab injuries particularly injury No.1 is on

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the neck region, and there are about 3 stab injuries around the face and chest of the deceased. Injury No.5,6 and 7 are injuries caused while resisting the attack by the deceased. Injury No.2 is on the right side of the chin and injury No.3 is on the left side of the chin and injury No.4 is the left side of the chest. The doctor had opined that the above said injuries would have been caused by M.O.18 knife. The knife was also recovered on the basis of the confession of the accused by P.W.26.Investigation Officer. The evidence of P.W.24, the finger Print Expert is to the effect that the finger print lifted from M.O.18 tallied with the right thumb finger print of the accused. Ex P30 is the Accident Register pertaining to the accused for the injury, he had sustained in the fingers. The injuries of the accused were not explained in this case by the accused. So, the learned Sessions Judge has come to a correct conclusion that the guilt under Section 302 IPC has been proved beyond reasonable doubt basing on the above evidence coupled with the Medical evidence of the doctor P.W.21.

8. When coming to the question of nature of offence, we have to take into consideration ,the confession statement Ex P26. A careful reading of Ex P26 will go to show that the accused came to Chennai from Rajasthan some seven years back prior to the date of occurrence and had started business at Thirunindravour and also opened a pawn broker shop and all the business ended in loss which resulted in closing of them and thereafter the accused was conducting a grocery shop at Door No.68, Dharmarajkoil Street, Thirunindravoor for the past ten months prior to the date of occurrence and that he was under the impression that all the business, he started ended in loss only because of the ill-luck of his wife and to set right the loss he has to borrow a sum of Rs.30,000/- from his cousin brother and only with the said loan amount, he could run the grocery shop business which is also running in loss and that his cousin who lend loan demanded the return of the loan on 4.7.1999 at about 8.00p.m., in front of his shop and also had criminally intimidated him and due to the shame received at the hands of his cousin, he had decided to repay the said loan and for that he demanded his wife to hand over the jewels, so that he can sell those jewels and settle the loan amount to his cousin brother, to which course, the deceased was not amenable and she had retaliated by saying that after murdering her, he can take the jewels and sell the same and settle the loan amount. Infuriated by the words spoken to by the deceased, thereupon he went inside the house brought a vegetable cutting knife and inflicted several injuries on the neck of the deceased causing instantaneous death. So only due to sustained provocation, the accused had taken the extreme step of murdering the deceased. On this point, a Division Bench of this Court rendered by my respectable and learned brother in Muthuvel and another-vs- State by Inspector of Police Keelarajakularaman Police Station, Virudhunagar District(2004-1 L.W.67) is relevant to be noted. The short facts of the said ratio-decidendi is that the first accused in the said case had asked the deceased who is none other than his wife to share the bed on the fateful day. But the deceased refused for the same since she was

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suffering from wound on her private part. Even then, the accused insisted for the intercourse stating that as a husband , he had a right to have intercourse with her. The deceased retaliated by saying that she would not co-operate with him and she does not want to live with him as wife anymore. Stating so,she removed her Thali from her neck and threw it on his face and also kicked him. Getting enraged at this, the accused took a pillow and pressed the same on her face. Within few minutes, the deceased died. Under those circumstances, it was decided that the accused is liable to be convicted for the offence under Section 304 (i) IPC and not under Section 302 IPC. The same facts will squarely applicable to the present facts of the case also. Here also, due to sustained provocation, the deceased inflicted injury on the deceased only to get the jewels to settle the loan amount borrowed from his cousin brother who had caused shame to him in front of his servants before his grocery shop on the date of the occurrence. Since the deceased had refused to hand over the jewels, he got infuriated and thereupon , he went in side the house and with the help of vegetable cutting knife inflicted injuries. Even during 313 Cr.P.c. questioning the accused had said that he had two small children and there is none to look after them. The learned counsel also represents that the children are now only under the custody of the accused. So under such circumstances, we are constrained to hold the conviction under Section 304 (I) IPC is appropriate. Accordingly, the conviction under Section 302 IPC is set aside. Instead, the appellant is convicted for the offence under Section 304 (I) IPC.

9. In the result,this appeal is partly allowed and the conviction for the offence under section 302 IPC imposed by the learned Sessions Judge in S.C.No.2/2000 is set aside and the accused is convicted under Section 304 (I)IPC instead of under Section 302 IPC and the accused is sentenced to undergo seven years rigorous imprisonment. The accused is to be secured and sent to prison to undergo the remaining part of the sentence.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Additional District and Sessions Judge(FTC NO.1) Chengalpattu
2. The District and Sessions Judge, Chengalpattu.
3. The Judicial Magistrate No.II,Thiruvallur
4. -do- through The Chief Judicial Magistrate, Chengalpattu.
5. The Superintendent of Central Prison, Vellore
[In duplicate for communication to the accused].
6.The Inspector of Police, Thirunindravoor Police Station
(Cr.No.269/1999)
7. The District Collector, Chengalpattu.
8. The Public Prosecutor, High Court, Madras-104
9. The Director General of Police, Mylapore, Madras.

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